

Senate File 2329

S-5040

1 Amend Senate File 2329 as follows:

2 1. By striking everything after the enacting clause and
3 inserting:

4 <Section 1. NEW SECTION. **622.31A Admissibility of evidence**
5 **in certain physical abuse and sexual offense cases.**

6 1. As used in this section:

7 *a. "Child"* means a person under fourteen years of age.

8 *b. "Cognitive impairment"* means a deficiency in a person's
9 short-term or long-term memory; orientation as to person,
10 place, and time; deductive or abstract reasoning; or judgment
11 as it relates to safety awareness.

12 *c. "Developmental disability"* means the same as defined
13 under the federal Developmental Disabilities Assistance and
14 Bill of Rights Act of 2000, Pub. L. No. 106-402, as codified in
15 42 U.S.C. §15002(8).

16 *d. "Intellectual disability"* means a disability of
17 children and adults who as a result of inadequately developed
18 intelligence have a significant impairment in ability to learn
19 or to adapt to the demands of society.

20 2. In a prosecution for physical abuse or a sexual offense
21 including but not limited to a sexual offense in violation of
22 section 709.2, 709.3, 709.4, 709.11, 709.12, 709.14, 709.15,
23 709.16, or 709.23, upon or against a child, a person with an
24 intellectual disability, person with a cognitive impairment, or
25 person with a developmental disability, the following evidence
26 shall be admitted as an exception to the hearsay rule if all of
27 the requirements in subsection 3 apply:

28 *a.* Testimony by the victim concerning an out-of-court
29 statement, whether consistent or inconsistent, made by the
30 victim to another person that is an initial disclosure of the
31 offense.

32 *b.* Testimony by another concerning an out-of-court
33 statement, whether consistent or inconsistent, made by the
34 victim that is an initial disclosure of an offense charged for
35 physical abuse or a sexual offense against the victim.

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(amending this SF 2329 to CONFORM to HF 2221)

1 3. The testimony described in subsection 2 shall be admitted
2 into evidence at trial as an exception to the hearsay rule if
3 all of the following apply:

4 a. The party intending to offer the statement does all of
5 the following:

6 (1) Notifies the adverse party of the intent to offer the
7 statement.

8 (2) Provides the adverse party with the name of the witness
9 through whom the statement will be offered.

10 (3) Provides the adverse party with a written summary of the
11 statement to be offered.

12 b. The court finds, in a hearing conducted outside the
13 presence of the jury, that the timing of the statement, the
14 content of the statement, and the circumstances surrounding
15 the making of the statement provide sufficient safeguards of
16 reliability.

17 c. The child, person with an intellectual disability, person
18 with a cognitive impairment, or a person with a developmental
19 disability testifies at the trial.

20 4. If a statement is admitted pursuant to this section,
21 the court shall instruct the jury that it is for the jury
22 to determine the weight and credibility to be given to the
23 statement, and in making that determination, the jury shall
24 consider the age and maturity of the child or the disability
25 of the person with an intellectual disability, person with
26 a cognitive impairment, or person with a developmental
27 disability; the nature of the statement; the circumstances
28 under which the statement was made, and any other relevant
29 factors.

30 5. This section shall not prevent the admission of any
31 evidence based upon forfeiture by wrongdoing.>

32 2. Title page, by striking lines 1 through 6 and inserting
33 <An Act relating to the admissibility of evidence in a
34 prosecution for physical abuse or a sexual offense upon or
35 against a child, person with an intellectual disability, person

1 with a cognitive impairment, or person with a developmental
2 disability.>

TOM SHIPLEY